TESTIMONY BEFORE SENATE BANKING COMMITTEE

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Good afternoon to the members of the Senate Banking Committee. My name is Joann Needleman and I am a member of the law firm Clark Hill PLC, which is based here in Michigan, and I lead the Consumer Financial Services Regulatory and Compliance Practice Group. I have been practicing law for 22 years litigating on behalf of and consulting for the financial services industry involving issues of consumer lending and debt collection.

I am the immediate past president of the National Creditors' Bar Association (NARCA) where I served on its board of directors 6 years prior. It was in that role that I was fortunate enough to be appointed in September of 2014 to the Consumer Financial Protection Bureau's (CFPB or Bureau) Consumer Advisory Board as the only representative of the credit and collections industry. That appointment is a 3 year term and which concludes in September of 2017.

The CFPB was specifically authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The CFPB is the first federal agency with a sole focus on protecting consumers in the consumer financial marketplace. Their mission is to make rules more effective, to consistently and fairly enforce rules, and to empower consumers to take more control over their financial lives.

My participation on the Advisory Board has allowed me the opportunity to gain a unique subject-matter expertise surrounding the CFPB, even though I may not agree with some of the CFPB's policies and proposals.

Since 2012, payday or short term loans as well as longer term installment loans have been a key focus of the CFPB's supervision and enforcement efforts. At that same time the Bureau began the process of fact gathering to assess whether there was a need for federal regulations to prevent unfair, deceptive and abusive acts or practices. Based upon this "fact gathering," the Bureau has put forth proposals for rules surrounding short and long-term credit products. However, these proposals simply ignore a long history of legislative and regulatory work at the state level, including those statutes already implemented in Michigan, and opts instead for a result that will ultimately end these types of credit products as we know them. Furthermore, the CFPB proposals fail to consider how consumers use payday loans and alternative credit products and how the states currently regulate those products. In fact, there is nothing in the CFPB's "fact gathering" that considers the consumer point of view regarding these products. As will be discussed, this lack of affordable credit will have a direct and significant impact upon those consumers, including Michigan consumers, who do not have the traditional means for accessing these credit options.

Nevertheless, the underlying themes of the CFPB's proposal: which is prevention and protection, can in fact be achieved by the necessary amendments to the Credit Service Organization Model (CSO) being proposed here today. Without these amendments, Michigan consumers will be shut out of both payday and longer term loans, losing out on the benefits of appropriate, fair and safe credit products that they actually desire.

My concerns and disagreements with the Bureau's proposals – which will have broad reaching effect over not only payday loans but deposit advance products, installment loans and other open end lines of credit whether short or long term – is that it achieves the wrong result and conflicts with the mission of the Bureau. Rather than allowing or empowering consumers to make better and more informed financial choices, the choices for consumer and ultimately for Michigan residents are being made for them instead. The CFPB has failed to consider the effective state regulations of these credit products in its proposal, choosing instead to broadly conclude that these credit products pose significant risks to consumers without more. The result is that a significant portion of consumers, including Michigan residents, are left abandoned from adequate and appropriate vehicles to access reasonable and affordable credit. These same consumers will then resort to those unregulated entities who certainly pose a far greater risk than the regulated lenders who offer these products today.

The reality in the marketplace is that as of 2013 the FDIC reports that 51 million Americans are either unbanked or underbanked (not served by traditional banking products like a checking account). The FDIC is currently undertaking an updated study, but there is no evidence to suggest that those figures have drastically changed. In Michigan, that same report found that 5.7% of the population was unbanked and 18.3% of the population was underbanked.

Furthermore, 76% of Americans are living paycheck to paycheck without resources to cover unexpected expenses or disruptions in income. Small-dollar, short-term loans and even longer term products are an essential option for these households. When an emergency or other important need arises these alternatives are often not only the most convenient, and necessary option, they are in some instances, the least expensive. To obtain a quick $500.00 loan to fix a car to go to work or to address a pressing medical expense is next to impossible from a traditional bank. Assuming that same consumer had a checking account and was able to overdraw their account by $20, that same consumer would incur an APR of 3270% for an overdraft fee of $27, even if that consumer repaid the overdraft in less than two weeks. Therefore, these credit products fulfill an extraordinary need for an inexpensive and efficient way for underserved households to access credit.

Another important aspect of these types of credit products is the significant efforts undertaken by 35 states, including Michigan, to ensure proper licensing, fair disclosures, a right of rescission as well as appropriate supervision and the enforcement of federal and state fair lending and debt collection laws. Each state, including Michigan, makes concerted attempts to strike the appropriate balance between providing and preserving access to credit for those in need with ensuring appropriate and effective consumer protection.

It is important to note that in those states where these credit products are completely banned or create an environment that precludes lenders from entering the marketplace due to lack of profitability, consumers suffer. A study by the Federal Reserve Bank of New York found that both Georgia and North Carolina saw higher incidences of returned checks, bankruptcy filings and complaints to the Federal Trade Commission about collection practices after those states banned payday lending. Consumers who do not have access to these types of credit products turn to costlier sources of credit and often to the Internet, where lending may be entirely unregulated.

Despite the market background just described, the CFPB has put forth proposals for short term (payday) loans defined as payment in full that is due within 45 days or less. In those instances, all lenders would be required to adhere to a one size fits all underwriting model that fails to account for the consumers those lenders are trying to help for the relatively small amounts they are seeking. It is not a novel concept that lenders want assurances that the money loaned will be paid back and that the amount loaned falls into some relationship to a consumer's income. The ability to access a consumer's financial snap-shot, quickly and cheaply, is the cornerstone of these products and which allows lenders to pass along those savings to the consumer. If the CFPB has its way, that financial assessment will be costly and onerous and will result in less consumers being able to qualify for loans and as stated above, a greater percentage of consumers, including Michigan residents, will be shut out of much needed financial services and affordable credit.

By its own admission, the CFPB has acknowledged that these proposals would lead to a "substantial reduction" in loan volume of up to 84% for those lenders choosing their onerous "ability to repay" option. If these proposals become the final rules, Michigan's short term lending industry would be effectively eliminated and approximately 2.3 million people would be left with no viable access to credit.

Credit Services Organizations (CSOs), especially those here in Michigan, provide consumers with relevant, vital and necessary information to make informed decisions about financial products they are considering as well as improve and enhance their financial well-being and credit worthiness. These services are paramount to achieving the intent and purpose of the CFPB's proposals, which is to "ensure that consumers can repay their loans" and that consumers can have access to credit that helps them rather than harms them. The current language of the Credit Services Protections Act (CSPA) recognizes the valuable services CSOs provide for Michigan consumers by placing strict mandates on when and in what manner a CSO may charge for its services as well as prohibits false and deceptive acts and practices.

That brings us to the bills being proposed. All of the aforementioned comments regarding the CFPB proposals and its potential effect of eliminating the availability of credit to consumers would be immune here in Michigan if the Department of Insurance and Financial Services (DIFS) had not erred in its interpretation of the language of the Regulatory Loan Act. Instead, their conclusion that fees paid by a consumer to a service provider or CSO should be aggregated with the interest and fees allowed to be charged by the lender, is really what brings us here today. Had DIFS read the language as written and allowed the CSO model to operate in the State, Michigan would already have a product that would meet the requirements of the CFPB. Instead, what we have now, even before the CFPB's proposals have been promulgated, is effectively no credit access for any Michigan consumers. Neighboring states, like Ohio, have consistently interpreted the intent and purpose of the CSO model correctly and are fully prepared to meet the CFPB's mandate when the rules are in fact implemented. Their CSO model is working;

Michigan's currently is not. The two bills proposed do little more than restore the plain reading of the statutes to correct that error in interpretation.

The amendments put forth for both the CSPA and the Regulatory Loan Act ensure that appropriate and customizable loan products (rather than a one-size fits all) are available for all Michigan consumers. This fits the mission of the Bureau, which is to "empower consumers to take more control over their financial lives" as well as to ensure the necessary protections are afforded to consumers to prevent them from entering into loan products that can cause them harm.

I am happy to answer any questions of the committee.